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10/822,886

04/13/2004

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4829A(CIP)

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EXAMINER

ARNOLD, ERNST V

ART UNIT

PAPER NUMBER

1616

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/822,886 | <b>Applicant(s)</b><br>GLENN ET AL. |  |
|                              | <b>Examiner</b><br>ERNST V. ARNOLD   | <b>Art Unit</b><br>1616             |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-12, 14-23, 45-47, 49-60 and 62-65 is/are pending in the application.  
     4a) Of the above claim(s) 12, 14-23, 57-60 and 62-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-11, 45-47 and 49-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

Applicant's petition was granted on 6/6/08. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/08/07 has been entered.

Claims 2, 13, 24-44, 48 and 61 have been cancelled. Claims 12, 14-23, 57-60 and 62-65 have been withdrawn. Claims 1, 3-11, 45-47 and 49-56 are under examination.

#### **Withdrawn rejections:**

Applicant's amendments and arguments filed 10/08/07 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 10, 45-47 and 49-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy (US 6,001,382) as evidenced by Ascione (US 5,670,137).

Levy discloses a composition of matter consisting essentially of about 50-99% by weight of a carrier component such as silicas, hydrophobic silicas, diatomaceous earth, clays, etc... and from about 0.0001-50% by weight of a bioactive agent such as petroleum oils, insecticides, plant growth regulators, herbicides, etc..., from about 1.0-50% by weight of plasticizer coating component such as naphthenic hydrocarbons and further comprising a binder and carrier coating agent and at least one additional component to regulate the controlled release of the bioactive agent such as diluents, adjuvants, salts such as NaCl (column 37, line 39), oils, surfactants, UV absorbers, and dyes, for example, in the form of a powder (claims 1-4 and 7-15; see also column 16, line 63 through column 17, line 8). "At least one" reads on at least two in instant claim 10. Petroleum oil is a petroleum based oil. Looking to the specification to find which silicas can be used in the invention, Levy discloses Aerosil R972 (calcined pyrogenic silica) in example 2 (column 23 example 2 and column 24, Table 2). Ascione discloses that Aerosil R972 has a particle size of less than 40 nm (column 3, lines 7-10). Therefore, the Examiner reasonably concludes that Levy discloses a composition for agricultural or horticultural use comprising calcined pyrogenic silica of a particle size less than about: 100 microns; 10 microns; 3 microns and 1 micron, an organic non-vegetable non-fuel high boiling oil and a surfactant as well as a salt (NaCl) to anticipate instant claims 1, 3-5, 10, 45-47 and 49-54. Claim 1 recites combinations of the carrier component and includes vermiculite (line 49) thus reading on plant growing media of instant claims 55 and 56. Levy discloses various carriers (column 7, lines 1-41). The specification discloses that hydrophobic silica treated with a chlorosilane has an

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average particle size of about 12 to 30 nm (column 8, lines 37-43) although carriers of any size are envisioned (column 6, lines 47-51).

Levy discloses that Biodac is a cellulosic paper containing about 47-53 wt% paper fiber, from about 28-34 wt% clay, including **kaolin**, about 14-20 wt% **calcium carbonate** or art known equivalents thereof and from about 0.01 to 0.9 wt% of an inorganic pigment such as **titanium dioxide** (column 7, lines 13-21).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 45-47 and 52-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Iijima et al. (US 4,948,589).

Iijima et al. disclose granular **powder** compositions for ruminants (hence an **agricultural nutrient composition**) comprising an excipients of maximum particle size of **20 microns or less** where the excipient can be a mixture of magnesium oxide and **talc** and a hydrophobic binder such as **stearic acid** or hydrogenated **tallow** or hydrogenated **lard** (an organic non-vegetable non-fuel high boiling animal oil) and an **ionic salt** such as choline chloride (an agrichemical), which is a water soluble organic salt, thus anticipating instant claims 1, 4, 5 and 52-54 (column 8, lines 30-55 and claims

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1-7). The limitation of 20 microns or less anticipates a particle size of 10 microns or 3 microns or 1 micron and reads on instant claims 45-47.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-11, 45-47 and 49-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Puterka et al. WO 98/38867 in view of Jackson et al. (US 2,821,500) and Walker (US 6,110,866).

Applicant claims a composition comprising a particulate material that has a particle size of less than 100 microns; an organic non-vegetable non-fuel high boiling oil; and at least one additive.

**Determination of the scope and content of the prior art**

**(MPEP 2141.01)**

Puterka et al. teach compositions for use in methods of protecting surfaces from arthropod infestation (Abstract; page 3, summary of the invention and claims 1-9). The compositions contain particulate materials such as hydrous kaolins and calcined kaolins (page 3, lines 25-30; and page 6, lines 7-30). Puterka et al. teach making the surface hydrophobic with various coatings that are well known in the art such as stearic acid and modified silicone fluids (page 7, line 1 through page 8, line 9). The particle size is below about 10 microns and preferably below 3 microns (page 8, lines 10-14 and page 9, lines 1-5). Slurries are made (page 8, lines 21-27 and page 10, lines 17-19). The composition can be applied to horticulture crops (page 9, lines 15-16). Adjuvants such as nonionic surfactants (plant oil based materials with emulsifiers, polymeric terpenes and nonionic detergents can be incorporated into the aqueous slurry (page 10, lines 21-24 and page 11, lines 3-14). Siloxane treated kaolin is known as Translink® 77 (page 17, lines 14-15 and page 19, lines 9-11). Translink® 77 meets the limitations of (a) and (b) of instant claim 1 because it is kaolin with a siloxane coating which is an organic non-vegetable non-fuel high boiling oil. Puterka et al. teach a composition on page 17, lines 23-25:

**to 100 gal water. Satintone® 5HB applied 25 pounds material suspended in 100 gal water with the addition of 27oz Ninex® MT-603 and 2 pints Toximul®. These**

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Satintone® 5HB is taught as being calcined kaolin particle (page 17, lines 15-17).

Ninex® MT-603 is a nonionic surfactant. Puterka et al. establish the equivalence of using Translink® 77 and Satintone® 5HB. Puterka et al. establish compositions of calcined kaolin with surfactants. In other words, Puterka et al. teach compositions of siloxane coated kaolin, a particulate material, which meets the limitations of (a) and (b) of instant claim 1 as explained above, and teach compositions of the particulate material with surfactants, limitation (c) of instant claim 1. The Examiner notes that it is not a far stretch to make a composition of Translink® 77 with a surfactant based on the teachings of Puterka et al. to arrive at the composition of instant claim 1. The composition could be used as a bloom thinning emulsion in the absence of evidence to the contrary.

Jackson et al. teach a granular insecticide coated with oil and an oil-dispersible organic toxicant for the insect (Column 2, lines 25-31). Jackson et al. teach an example of a composition comprising malathion, scarlet dye, gelatin, mineral oil, sucrose and oyster shell (Column 12, lines 20-26). Oyster shell is a form of calcium carbonate. A dye of any color can be added (Column 2, lines 65-67 and column 6, lines 64-73). Sand, quartz and granite are other granular substances that can be used as a carrier (Column 3, lines 28-31). Any non-drying or semi-drying vegetable, animal or marine oil or mineral oil may be used but mineral or glyceride oil is preferred (Column 5, lines 3-8). A dispersant is used to scatter the toxicant-oil solution into and throughout the moisture that comes in contact with the granules (Column 6, lines 43-55).

Walker teaches in claims 4 and 5:



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4. The agricultural composition of claim 1, wherein the fertilizer is ammonium nitrate, ammonium sulfate, ammonium polyphosphate, calcium nitrate, calcium sulfate, diammonium phosphate, triple super phosphate, single super phosphate, lime or limestone, magnesium sulfate, manganese sulfate, monoammonium phosphate, monocalcium phosphate, potassium nitrate, potassium chloride, potassium magnesium sulfate, sulfate of potash, sodium nitrate, sulfur-coated urea, borax, pelleted fertilizers, fertilizers coated for slow release, or mixtures thereof.

5. The agricultural composition of claim 3, wherein the soil additive is diatomaceous earth, calcium sulfate, corn cob particulate, bentonite clay, vermiculite, or combinations of these substances.

Walker clearly establishes various salts and soil additives/plant producing media in agricultural compositions.

#### **Ascertainment of the difference between the prior art and the claims**

##### **(MPEP 2141.02)**

1. The difference between the instant application and Puterka et al. is that Puterka et al. do not expressly teach adding colorants to the composition of a particulate material, organic non-vegetable non-fuel high boiling oil and at least one additive. This deficiency in Puterka et al. is cured by the teachings of Jackson et al.

2. The difference between the instant application and Puterka et al. is that Puterka et al. do not expressly teach adding various salts or plant producing media to the composition. This deficiency in Puterka et al. is cured by the teachings of Walker.

#### **Finding of prima facie obviousness**

##### **Rational and Motivation (MPEP 2142-2143)**

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add a colorant (dye), as suggested by Jackson et al., to the composition of a particulate material, organic non-vegetable non-fuel high boiling oil and at least one additive of Puterka et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Puterka et al. teach compositions of siloxane coated kaolin, a particulate material, which meets the limitations of (a) and (b) of instant claim 1 as explained above, and teach compositions of the particulate material with surfactants, limitation (c) of instant claim 1, and Jackson et al. teach that addition of the dye acts as a color indicator for thoroughness of distribution of the liquid or semi-solid coating material upon the solid particles and confers attractiveness in appearance to the user and renders the particles more conspicuous to the human eye (column 6, lines 64-73). It is the Examiner's position that it is merely judicious selection of known colorants, whether it is a form of graphite or pigments that absorb in the red, blue or green, for example, by one of ordinary skill in the art, to add to the composition to confer the desired properties in the absence of evidence to the contrary.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add various salts and plant producing media, as suggested by Walker, to the composition of Puterka et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because the instant invention is drawn to agricultural compositions and Walker teaches that these

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are components to agricultural compositions. "It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

Besides, once the composition hits the soil it would then intrinsically comprise soil.

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-10, 45-47 and 49-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levy (US 6,001,382) in view of Puterka et al. WO 98/38867 and Walker (US 6,110,866).

Applicant claims a composition comprising a particulate material that has a particle size of less than 100 microns; an organic non-vegetable non-fuel high boiling oil; and at least one additive.

#### **Determination of the scope and content of the prior art**

##### **(MPEP 2141.01)**

The references of Levy, Puterka et al., and Walker are discussed in detail above and those discussions are hereby incorporated by reference.

#### **Ascertainment of the difference between the prior art and the claims**

##### **(MPEP 2141.02)**

1. The difference between the instant application and Levy is that Levy does not expressly teach various calcined clays in the composition. This deficiency in Levy is cured by the teachings of Puterka et al.

2. The difference between the instant application and Levy is that Levy does not expressly teach various colorants in the composition.

3. The difference between the instant application and Levy is that Levy do not expressly teach various salts in the composition. This deficiency in Levy is cured by the teachings of Walker.

### **Finding of prima facie obviousness**

#### **Rational and Motivation (MPEP 2142-2143)**

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add calcined clays, as suggested by Purterka et al., to the composition of Levy and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Levy broadly teaches using clays as the carrier material and Purterka et al. teach using various calcined clays for the same purpose.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to various colorants to the composition of Levy and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Levy teaches adding dyes and metal oxides to the composition (see claim 1 lines 45-46 and claim 14, line 43). It is merely judicious selection of a metal oxide or dye to add to the composition by one of ordinary skill in the art absent evidence to the contrary.

3. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add various ionic salts, as suggested by Walker, to the composition of Levy and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Levy teaches adding pesticides/herbicides to the composition thus making it an agricultural composition and Walker teaches that these are components to agricultural compositions. "It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

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obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-11, 45-47 and 49-56 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 7-9 and 11-26 of U.S. Patent No. 7,018,643 in view of Jackson et al. (US 2,821,500) and Walker (US 6,110,866). Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the instant invention embraces or is embraced by the subject matter disclosed in the patent. The patent discloses a pesticide delivery system comprising at least 90% of the particulate material has a particle size of less than 10 microns, for example, calcined kaolin (claim 1) with a continuous film of a hydrophobic outer surface of modified silicone fluids and fatty acids (claim 8) and further comprising surfactants and other agents such as pest control agents (claims 1, 9 and 11). The particulate material can further comprise titanium dioxide which is a pigment or colored particle as well as the plant producing media diatomaceous earth (claim 16).

The patent does not expressly disclose a composition where the particulate material has a particle size of about 100 microns or less or is in the form of a powder, slurry or emulsion or comprises various known plant fertilizer salts and plant producing media.

However, one of ordinary skill in the art would have recognized that “at least 90%” would include 100% of the particles and the system must have some form whether that is as a dry powder or slurry/dispersion/emulsion in aqueous media and therefore read on the instant invention. The addition of known components of agricultural compositions, as taught by Jackson et al. and Walker, is prima facie obvious in the absence of evidence to the contrary.

Claims 1, 3-11, 45-47 and 49-56 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,060,521 in view of Puterka et al. WO 98/38867 and Jackson et al. (US 2,821,500) and Walker (US 6,110,866). Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the instant invention embraces or is embraced by the subject matter disclosed in the patent. The patent discloses an aqueous dispersion comprising a particulate material (kaolin) having a hydrophobic outer surface (claim 1) at least 90% of the particulate material has a particle size of less than 10 microns (claim 7) and wherein the particulate solid material has a mean particle size below about 3 microns (claim 2). The claim language is open to the addition of other materials.



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The patent does not expressly teach adding calcined particulate materials, the type of hydrophobic outer surface, colorants, agricultural salts or plant growing media.

However, Puterka et al., Jackson et al. and Walker teach the missing ingredients as explained in detail above. One of ordinary skill in the art would have recognized the obvious variation of the instant invention over the patented Claims.

***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ernst V Arnold/  
Examiner, Art Unit 1616